§ 511.1(c) (4) and (d), relating to termination of an INAD for a sponsor.

§ 812.119, relating to whether an investigator is eligible to receive test articles under part 812 of this chapter and eligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

§ 814.46(c) relating to withdrawal of approval of a device premarket approval application.

§ 822.7(a)(3), relating to an order to conduct postmarket surveillance of a medical device under section 522 of the act.

§ 830.130, relating to suspension or revocation of the accreditation of an issuing agency.

§ 900.7, relating to approval, reapproval, or withdrawal of approval of mammography accreditation bodies or rejection of a proposed fee for accreditation.

§ 900.14, relating to suspension or revocation of a mammography certificate.

§ 900.25, relating to approval or withdrawal of approval of certification agencies.

§ 1003.11(a)(3), relating to the failure of an electronic product to comply with an applicable standard or to a defect in an electronic product.

§ 1003.31(d), relating to denial of an exemption from notification requirements for an electronic product which fails to comply with an applicable standard or has a defect.

§ 1004.6, relating to plan for repurchase, repair, or replacement of an electronic product.

§ 1107.1(d), relating to rescission of an exemption from the requirement of demonstrating substantial equivalence for a tobacco product.

§ 1210.30, relating to denial, suspension, or revocation of a permit under the Federal Import Milk Act.

§ 1270.43(e), relating to the retention, recall, and destruction of human tissue.

§ 1271.440(e) relating to the retention, recall, and destruction of human cells, tissues, and cellular and tissue-based products (HCT/Ps), and/or the cessation of manufacturing HCT/Ps.

[44 FR 22367, Apr. 13, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 16.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

### § 16.5 Inapplicability and limited applicability.

(a) This part does not apply to the following:

(1) Informal presentation of views before reporting a criminal violation under section 305 of the act and section 5 of the Federal Import Milk Act and § 1210.31.

(2) A hearing on a refusal of admission of a food, drug, device, or cosmetic under section 801(a) of the act and § 1.94, or of an electronic product under section 360(a) of the Public Health Service Act and § 1005.20.

(3) Factory inspections, recalls (except mandatory recalls of medical devices intended for human use), regulatory letters, and similar compliance activities related to law enforcement.

(4) A hearing on an order for relabeling, diversion, or destruction of shell eggs under section 361 of the Public Health Service Act (42 U.S.C. 264) and §§ 101.17(h) and 115.50 of this chapter.

(5) A hearing on an order for diversion or destruction of shell eggs under section 361 of the Public Health Service Act (42 U.S.C. 264), and § 118.12 of this chapter.

(b) If a regulation provides a person with an opportunity for hearing and specifies some procedures for the hearing but not a comprehensive set of procedures, the procedures in this part apply to the extent that they are supplementary and not in conflict with the other procedures specified for the hearing. Thus, the procedures in subpart A of part 108 relating to emergency permit control are supplemented by the nonconflicting procedures in this part, e.g., the right to counsel, public notice of the hearing, reconsideration and stay, and judicial review.

[44 FR 22367, Apr. 13, 1979, as amended at 57 FR 58403, Dec. 10, 1992; 65 FR 76110, Dec. 5, 2000; 74 FR 33095, July 9, 2009]

## Subpart B—Initiation of Proceedings

### § 16.22 Initiation of regulatory hearing.

(a) A regulatory hearing is initiated by a notice of opportunity for hearing from FDA. The notice will—

(1) Be sent by mail, telegram, telex, personal delivery, or any other mode of written communication;

(2) Specify the facts and the action that are the subject of the opportunity for a hearing;

(3) State that the notice of opportunity for hearing and the hearing are governed by this part; and

(4) State the time within which a hearing may be requested, and state the name, address, and telephone number of the FDA employee to whom any request for hearing is to be addressed.

(5) Refer to FDA's guideline on electronic media coverage of its administrative proceedings (21 CFR part 10, subpart C).

(b) A person offered an opportunity for a hearing has the amount of time specified in the notice, which may not be less than 3 working days after receipt of the notice, within which to request a hearing. The request may be filed by mail, telegram, telex, personal delivery, or any other mode of written communication, addressed to the designated FDA employee. If no response is filed within that time, the offer is deemed to have been refused and no hearing will be held.

(c) If a hearing is requested, the Commissioner will designate a presiding officer, and the hearing will take place at a time and location agreed upon by the party requesting the hearing, the FDA, and the presiding officer or, if agreement cannot be reached, at a reasonable time and location designated by the presiding officer.

(d) A notice of opportunity for hearing under this section will not operate to delay or stay any administrative action, including enforcement action by the agency unless the Commissioner, as a matter of discretion, determines that delay or a stay is in the public interest.

[44 FR 22367, Apr. 13, 1979, as amended at 49 FR 32173, Aug. 13, 1984]

### § 16.24 Regulatory hearing required by the act or a regulation.

(a) A regulatory hearing required by the act or a regulation under § 16.1(b) will be initiated in the same manner as other regulatory hearings subject to the additional procedures in this section.

(b) [Reserved]

(c) The notice will state whether any action concerning the matter that is the subject of the opportunity for hearing is or is not being taken pending the hearing under paragraph (d) of this section.

(d) The Commissioner may take such action pending a hearing under this section as the Commissioner concludes is necessary to protect the public health, except where expressly prohibited by statute or regulation. A hearing to consider action already taken, and not stayed by the Commissioner, will be conducted on an expedited basis.

(e) The hearing may not be required to be held at a time less than 2 working days after receipt of the request for hearing.

(f) Before the hearing, FDA will give to the party requesting the hearing reasonable notice of the matters to be considered at the hearing, including a comprehensive statement of the basis for the decision or action taken or proposed that is the subject of the hearing and a general summary of the information that will be presented by FDA at the hearing in support of the decision or action. This information may be given orally or in writing, in the discretion of FDA.

(g) FDA and the party requesting the hearing will, if feasible, at least 1 day before the hearing provide to each other written notice of any published articles or written information to be presented at or relied on at the hearing. A copy will also be provided in advance if the other participant could not reasonably be expected to have or be able to obtain a copy. If written notice or a copy is not provided, the presiding officer may, if time permits, allow the party who did not receive the notice or copy additional time after the close of the hearing to make a submission concerning the article or information.

[44 FR 22367, Apr. 13, 1979, as amended at 47 FR 26375, June 18, 1982; 54 FR 9037, Mar. 3, 1989]

### § 16.26 Denial of hearing and summary decision.

(a) A request for a hearing may be denied, in whole or in part, if the Commissioner or the FDA official to whom